

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.11.445, 24.11.452A, 24.11.457,) ON PROPOSED AMENDMENT
24.11.2201, 24.11.2221, and 24.11.2511,)
related to unemployment insurance matters)

TO: All Concerned Persons

1. On October 2, 2007, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (Room 104), Walt Sullivan Building, 1327 Lockett Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 25, 2007, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Division, Department of Labor and Industry, Attn: Don Gilbert, P.O. Box 8020, Helena, MT 59604-8020; telephone (406) 444-4336; fax (406) 444-2993; TDD (406) 444-0532; or e-mail dgilbert@mt.gov.

3. The rules proposed to be amended provide as follows, stricken material interlined, new material underlined:

24.11.445 INACTIVE CLAIMS--REACTIVATING A CLAIM (1) remains the same.

(2) To reactivate an inactive claim, the claimant must:

(a) call the claims processing center during the center's published business hours and request that the claim be reactivated; or

(b) access the department's internet claims application.

(3) A reactivated claim is effective on the first day of the calendar week in which the claimant reactivates the claim. A claimant may request that the department backdate the claim to an earlier effective date. If the department finds that the claimant had good cause for the delay in reactivating the claim, the claim will be backdated.

(3) remains the same but is renumbered (4).

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2103, 39-51-2104, ~~39-51-2201~~ 39-51-2401, MCA

Reason: There is reasonable necessity to amend ARM 24.11.445 in order to clarify that a claim can be reactivated via the department's internet-based claims system while the unemployment insurance claims rules were otherwise being proposed for amendment. The need to clarify the rule was recently noted by staff while reviewing

the unemployment insurance claims rules. In addition, there is reasonable necessity to amend the implementation authority to correct an apparent typographic error in the citation.

24.11.452A ELIGIBILITY FOR BENEFITS (1) and (2) remain the same.

(a) the medical condition and the resultant limitation are verified by a licensed and practicing ~~physician~~ health care provider;

(b) through (d) remain the same.

(3) A claimant is not available for work within the meaning of 39-51-2104, MCA, if the claimant:

(a) ~~is, for reasons including, but not limited to, lack of transportation, lack of child or other dependant care, incarceration, vacation or travel,~~ unwilling or unable to accept an offer of new work for more than two days in a benefit week if those days are normal days of work in the claimant's customary occupation or in an occupation determined by the department to be suitable for the claimant under 39-51-2304, MCA, for reasons including, but not limited to:

(i) lack of transportation;

(ii) lack of child or other dependent care;

(iii) incarceration;

(iv) vacation; or

(v) travel;

(b) through (4)(a) remain the same.

(b) not incarcerated for more than two days in a benefit week if those days are normal work days:

(i) in the claimant's occupation; or

(ii) in a suitable occupation as determined by the department under 39-51-2304, MCA;

(b) and (c) remain the same but are renumbered (c) and (d).

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2101, 39-51-2104, 39-51-2304, MCA

Reason: There is reasonable necessity to amend ARM 24.11.452A in order to implement those provisions of Chapter 52, Laws of 2007 (House Bill 111), which changed the term "licensed and practicing physician" to "licensed and practicing health care provider". In addition, there is reasonable necessity to clarify subsection (3)(a) by earmarking the various examples while the rule is otherwise being amended.

24.11.457 LEAVING WORK WITH OR WITHOUT GOOD CAUSE
ATTRIBUTABLE TO THE EMPLOYMENT (1) remains the same.

(a) the claimant:

~~(a)~~(i) had compelling reasons arising from the work environment that caused the claimant to leave; and

(ii) ~~the claimant~~ attempted to correct the problem in the work environment;
and

(iii) ~~the claimant~~ informed the employer of the problem and gave the employer a reasonable opportunity to correct it; or

(b) through (2)(b) remain the same.

(c) a condition underlying a workers' compensation or occupational disease claim for which liability has been accepted by a workers' compensation insurer. If the condition is one for which liability has not been accepted by the workers' compensation insurer, the department will independently evaluate the condition to determine whether the condition appears to result from the claimant's employment. If the condition appears to the satisfaction of the unemployment insurance division to be work related, the condition will be considered to provide a compelling reason for the purpose of this rule. However, upon recovery from that condition, as certified by a licensed and practicing ~~physician or chiropractor~~ health care provider, the claimant must offer to return to work or be disqualified for leaving work without good cause attributable to the employment, unless there is substantial evidence concerning the nature, severity, duration, and prognosis of the illness or injury, verified by a licensed and practicing ~~physician or chiropractor~~ health care provider, to establish that the claimant's health would be substantially jeopardized by returning to the claimant's regular or comparable suitable work; or

(d) remains the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2302, MCA

Reason: There is reasonable necessity to amend ARM 24.11.457 in order to implement those provisions of Chapter 52, Laws of 2007 (House Bill 111), which changed the term "licensed and practicing physician" to "licensed and practicing health care provider". The department notes that chiropractors are covered by the new terminology.

24.11.2201 EXPERIENCE-RATED EMPLOYERS (1) through (9) remain the same.

(10) Beginning in the first quarter of ~~2000~~ 2008, an assessment in the amount of ~~.13~~ .18 percent of taxable wages, as provided by 39-51-404, MCA, must be paid by all experience-rated employers and deposited in the employment security account provided for in 39-51-409, MCA. The ~~.13-percent assessment amount~~ amount is not considered as "contributions" for the purposes of 39-51-401, MCA, and for purposes of reporting on form 940 Employer's Annual Federal Unemployment (FUTA) Tax Return.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-301, 39-51-404, 39-51-1103, 39-51-1121, 39-51-1123, 39-51-1213, MCA

Reason: There is reasonable necessity to amend ARM 24.11.2201 in order to implement those provisions of Chapter 362, Laws of 2007 (House Bill 790), which changed assessment and contribution rates for certain employers.

24.11.2221 STATE AND LOCAL GOVERNMENT EXPERIENCE RATING

(1) remains the same.

(2) For wages paid through June 30, 2008:

(a) Governmental entities are assessed for purposes of 39-51-404, MCA, at the rate of .05 percent of total quarterly wages.

(3)(b) The following is the rate schedule used for governmental entities.

RATE FOR GOVERNMENTAL ENTITIES
EXPERIENCE RATING SYSTEM

Individual Employer's Benefit Cost Ratio	*Median Benefit Cost Ratio												
	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
.1 or less	.1	.1	.2	.3	.4	.5	.6	.7	.8	.9	1.1	1.3	1.5
.2	.1	.1	.2	.3	.4	.5	.6	.7	.8	.9	1.1	1.3	1.5
.3	.1	.2	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.3	1.5
.4	.2	.2	.3	.4	.5	.6	.7	.8	.9	1.0	1.2	1.3	1.5
.5	.2	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.4	1.5
.6	.2	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.3	1.4	1.5
.7	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
.8	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
.9	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
1.0	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.3	1.4	1.5
1.1	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.4	1.5
1.2	.4	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.4	1.5	1.5
1.3	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.4	1.5	1.5
1.4	.5	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5	1.5	1.5	1.5
1.5	.5	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5	1.5	1.5	1.5

*Total benefits charged to all governmental entities for all past periods divided by total wages paid by all governmental entities for all past periods. This percentage is used as a median rate. The column headed by that percent is used when the past experience computes to that figure.

(3) For wages paid on or after July 1, 2008:

(a) Governmental entities are assessed for purposes of 39-51-404, MCA, at the rate of .09 percent of total quarterly wages.

(b) The following is the rate schedule used for governmental entities.

RATE FOR GOVERNMENTAL ENTITIES
EXPERIENCE RATING SYSTEM

<u>Individual</u> <u>Employer's</u> <u>Benefit</u> <u>Cost</u> <u>Ratio</u>	<u>*Median Benefit Cost Ratio</u>												
	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
<u>.06 or</u> <u>less</u>	.06	.06	.16	.26	.36	.46	.56	.66	.76	.86	1.06	1.26	1.46
<u>.16</u>	.06	.06	.16	.26	.36	.46	.56	.66	.76	.86	1.06	1.26	1.46
<u>.26</u>	.06	.16	.26	.36	.46	.56	.66	.76	.86	.96	1.06	1.26	1.46
<u>.36</u>	.16	.16	.26	.36	.46	.56	.66	.76	.86	.96	1.16	1.26	1.46
<u>.46</u>	.16	.26	.36	.46	.56	.66	.76	.86	.96	1.06	1.16	1.36	1.46
<u>.56</u>	.16	.26	.36	.46	.56	.66	.76	.86	.96	1.06	1.26	1.36	1.46
<u>.66</u>	.26	.36	.46	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.46
<u>.76</u>	.26	.36	.46	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.46
<u>.86</u>	.26	.36	.46	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.46
<u>.96</u>	.36	.46	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.26	1.36	1.46
<u>1.06</u>	.36	.46	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.36	1.46
<u>1.16</u>	.36	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.36	1.46	1.46
<u>1.26</u>	.46	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.36	1.46	1.46

1.36	.46	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.46	1.46	1.46	1.46
1.46	.46	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.46	1.46	1.46	1.46

*Total benefits charged to all governmental entities for all past periods divided by total wages paid by all governmental entities for all past periods. This percentage is used as a median rate. The column headed by that percent is used when the past experience computes to that figure.

AUTH: 39-51-302, MCA
IMP: 39-51-404, 39-51-1212, MCA

Reason: There is reasonable necessity to amend ARM 24.11.2221 in order to implement those provisions of Chapter 362, Laws of 2007 (House Bill 790), which changed assessment and contribution rates for certain employers. The proposed new rates do not get used or applied until July 1, 2008. The department is proposing the changes at this time in order that employers, bookkeepers, and accountants have sufficient advance notice of the proposed new rates and so they can make appropriate changes to computerized accounting and payroll systems in a timely manner.

24.11.2511 PAYMENTS THAT ARE NOT WAGES--EMPLOYEE EXPENSES (1) through (1)(e)(i) remain the same.
(ii) a flat rate for meals and lodging, no greater than the amount allowed to employees of the state of Montana under 2-18-501(1)(b) and (2)(b), MCA for meals, and 2-18-501(5), MCA for lodging, unless, through documentation, the employer can substantiate a higher rate;
(iii) through (v) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

Reason: There is reasonable necessity to amend ARM 24.11.2511 in order to correct and streamline an internal citation to a statute while the unemployment insurance contributions rules were otherwise being proposed for amendment. The need to clarify the rule was recently noted by staff while reviewing the unemployment insurance contributions rules.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Don Gilbert, Unemployment Insurance Division, Department of Labor and Industry, P.O. Box 8020, Helena, Montana 59604-8020; by facsimile to (406) 444-4336; or by e-mail to dgilbert@mt.gov, and must be received no later than 5:00 p.m., October 9, 2007.

5. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 111 was notified on July 30, 2007, by regular mail. The primary sponsor of House Bill 790 was notified on July 30, 2007, by regular mail.

8. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 27, 2007